

Fax Transmittal Memo

To: <i>The Honorable Dan Morales</i>		7672		No. of Pages: <i>3</i>		Transmit Date: <i>9-25-92</i>		Time	
Company		From: <i>Charles Karakashian</i>		Company: <i>DPS</i>		Location: <i>Legal</i>		Dept. Charge	
Location		Fax #: <i>463-2084</i>		Telephone #: <i>483-5716</i>		Telephone #: <i>465-2893</i>			
Comments		Original		Disposition: <input type="checkbox"/> Destroy <input type="checkbox"/> Return <input type="checkbox"/> Call for pickup					

TEXAS DEPARTMENT OF PUBLIC SAFETY

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JAMES R. WILSON
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September 25, 1992

The Honorable Dan Morales
Attorney General of Texas
Price Daniel, Sr., Building
209 W. 14th Street
Austin, Texas

Re: Open Records Request

Dear General Morales:

Pursuant to Section 7 of the Texas Open Records Act, Article 6252-17a, V.T.C.S., the Texas Department of Public Safety hereby requests a decision as to whether certain information is exempt from public disclosure under Sections 3(a)(1) and 3(a)(8).

Attached as Exhibit A is a letter from Mr. Roy Lynn Lynch. Mr. Lynch requests a copy of a background investigative report made on him by DPS. The report was conducted pursuant to an application to the Texas Racing Commission for a race track license. Mr. Lynch is a party to the application. The report is attached as Exhibit B.

This is a case of first impression for us. We have not had a request by an applicant for information on himself. ORD-567 has determined that an investigative file, prepared for the Texas Racing Commission by DPS, is confidential pursuant to Section 2.15 of Article 179e, V.T.C.S. Section 2.16 of that same Article provides that a DPS investigative file is confidential and is not subject to public disclosure. However, Section 2.16 does state that the file is "...subject to discovery by a person that is the subject of the files..."

The department questions whether the word "discovery" contemplates litigation or should be given its normal, everyday usage. If it contemplates litigation, this would mean that the subject could not gain access to the investigative file unless the subject was involved in litigation. If it doesn't, then the subject would have access to it at any time.

The department is also concerned that release of an investigative file to the

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Opinion Committee



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RQ-451

may, in some way, jeopardize the deliberative process. These investigative files may also contain sensitive confidential informant information or may turn up leads in an active criminal investigation.

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The department questions whether this investigative file should remain confidential until the Commission holds its hearing. Here, the Commission has not held a meeting yet on this application.

If you need any other additional information or have any questions, please feel free to call.

Sincerely,



Charles Karakashian, Jr.
Assistant General Counsel

CK:bif

Enclosures